REPORTABLE

IN SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 250 OF 2020
ARISING OUT OF SPECIAL LEAVE PETITION (CRL) NO. 5224 OF 2017

Arun Singh & Others ..... Appellant(s)

VERSUS

State of U.P. through its Secretary & Another .....… Respondent(s)

JUDGMENT

KRISHNA MURARI, J.

Leave granted.

2. This appeal is directed against the impugned judgment and order dated 24.11.2016 passed by the ***High Court***[1] dismissing the petition filed by the appellants under Section 482 of the Criminal Procedure Code (in short 'the CrPC) challenging the charge sheet filed against them. The High Court while rejecting Section 482 CrPC petition directed the accused appellants to surrender before the Court concerned within 30 days from the date of order and in case they do so within the stipulated period and apply for bail the same was liable to be considered and decided in view of law laid down by full bench of High Court in case of ***Amrawati & another versus State of U.P.***[2] affirmed by this court in ***Lal Kamlendra Pratap Singh versus State of U.P.***[3]

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[1] *High Court of Judicature at Allahabad*

[2] *2004 (57) ALR 290*

[3] *2009 (3) ADJ 322 (SC)*

3. Shorn of unnecessary details the brief facts which led to the filling of this appeal can be summarised as under:-

Respondent No. 2 lodged First Information Report with Police Station Izzat Nagar, District Bareilly under Section 493 I.P.C. read with Section 3/4 of the Dowry Prohibition Act against the appellants herein which was registered as case crime No. 431 of 2014. The allegations made in the F.I.R. were that Respondent No.-2 approached Appellants with the proposal of marriage of his daughter Jyoti with Appellant No.-1. On 30th June, 2013 the appellants visited the house of Respondent No.-2 and after meeting his daughter the proposal was finalised. On 21.07.2013, ring ceremony was performed and date of marriage was scheduled for 19.11.2013. Thereafter, Appellant No.-2 started visiting the house of complainant/respondent no.-2. frequently and misleading his daughter Jyoti that now since the marriage is finalised and only ceremony of 'feras' remains to be performed took her for outings on various occasions. On 16.08.2013 appellant No.-2 induced Jyoti to his room and established physical relationship with her. However, subsequently thereto the appellant started making demand of dowry of Rs. 5 Lakh. A complaint in this regard was made before Mahila Thana but no action was taken. On coming to know that marriage of Appellant No.-2 was settled with some other girl for a handsome amount of dowry, the First Information Report was being lodged.

4. The matter was investigated by the concerned Police Station and a charge sheet was filed against the appellants, which was challenged before the High Court by way of petition under Section 482 CrPC.

5. The case set up by the appellants before the High Court was that behaviour of the complainant and his family members changed after the date of marriage was fixed and they refused to share the expenses of marriage, which was settled between the parties to be shared equally. Further, a demand of Rs. 10 Lakhs was made from the appellants with a threat to implicate them in a false case in case the demand was not fulfilled. It was further pleaded that Appellant No.-2 made an application under Section 156(3) CrPC before the ACJM against the complainant and his other family members. During the pendency of proceedings under Section 156(3) CrPC a complaint was made by Respondent No.-2 in the Mahila Thana. The inspector incharge of Mahila Thana summoned both the parties where the dispute between them was compromised. In view of the compromise arrived, the appellants did not press the application under Section 156 (3) CrPC. However, the Complainant-Respondent No.-2 filed the First Information Report after about 10 months of the compromise.

6. The High Court finding that there was no justification for quashing the charge sheet dismissed the petition.

7. Learned counsel for the appellant vehemently contended that the High Court has failed to appreciate and consider that the fresh criminal action can not be launched on the basis of the same cause of action, which was already settled 10 months back by way of compromise which was acted upon by both the parties.

8. Learned counsel further submits that the High Court has failed to consider and appreciate that the allegations as contained in the First Information Report even if taken on the face value and assumed to be correct in entirety, do not prima-facie disclose commission of any offence, much less a cognizable offence. It is also submitted on behalf of the appellants that the High Court did not appreciate and consider the fact at all that the allegations in the F.I.R., prima-facie, do not constitute commission of any offence and dismissed the 482 petition without adverting itself to this aspect of the matter.

9. Learned counsel for the respondent refuting the arguments advanced on behalf of appellants submitted that the First Information Report was filed under Section 493 of the Indian Penal Code (in short the “I.P.C.”) read with Section 3/4 of the Dowry Prohibition Act and both the aforesaid offences are non-compoundable in nature and thus could not have been compromised. The allegations made in the First Information Report were found to be substantiated on investigation and thus a charge sheet filed by the Police and the High Court rightly dismissed the petition for quashing of the same.

10. We have considered the rival submissions and perused the facts on record.

11. The offence under Section 493 is non-compoundable. Similarly, the offence under Section 3/4 of the Dowry Prohibition Act is also non-compoundable, in view of Section 8(2) of the said Act, which provides that every offence under this Act, shall be non-bailable and non-compoundable.

12. Though the offence in question are non-compoundable but the power of the High Court under Section 482 CrPC of the Court to quash the proceedings in such offences is well recognised by various decision of this court and the issue is no longer *res integra*. Reference may be made to the observations of Three Judge Bench of this Court in ***Gian Singh versus State of Punjab.***[4]

> "Quashing of offences or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of the offence. They are different and not interchangeable. Strictly speaking the power of compounding of offence given to a Court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of the inherent jurisdiction. In compounding of offence, power of a criminal court is circumscribed by the provisions

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[4] *(2012) 10 SCC 303*

contained in Section 320 and the Court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceedings or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimately consequence may be acquittal or dismissal of indictment.

B.S. Joshi, Nikhil Merchant, Manoj Sharma and Shiji to illustrate the principle that High Court may quash the criminal proceedings or F.I.R. or complaint in exercise of its inherent power under Section 482 of the Code and Section 320 does not limit or effect the powers of the High Court under Section 482. Can it be said that by quashing criminal proceedings in B.S. Joshi, Nikhil Merchant, Manoj Sharma and Shiji this Court has compounded the non-compoundable offences indirectly? We do not think so. There does exists the distinction between compounding of an offence under Section 320 and quashing of a criminal case by a High Court in exercise of inherent power under Section 482. The two powers are distinct and different although the ultimate consequence may be the same viz. acquittal of the accused or dismissal of the indictment.

13. Another Three Judge Bench of this Court in ***Parbatbhai Aahir & Others versus State of Gujarat & Others***.[5] After analysing the precedents on, the above issue has summarised the broad principles in paragraph 15 of the reports as under:-

> 15. "*The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:-*
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> *(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;*
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> *(ii) The invocation of the jurisdiction of the High court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The Power to quash Under Section 482 is attracted even if the offence is non-compoundable.*
>
> *(iii) In forming an opinion whether a criminalproceeding or complaint should be quashed in exercise of its jurisdiction Under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;*
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> *(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;*

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[5] ***(****2017) 9 SCC 641*

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power Under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

> *(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."*

14. In another decision in the case of ***Narinder Singh Vs. State of Punjab***[6] it has been observed that in respect of offence against the society it is the duty to punish the offender. Hence, even where there is a settlement between the offender and victim the same shall not prevail since it is in interests of the society that offender should be punished which acts as deterrent for others from committing similar crime. On the other hand, there may be offences falling in the category where the correctional objective of criminal law would have to be given more weightage than the theory of deterrent punishment. In such cases, the court may be of the opinion that a settlement between the parties would lead to better relations between them and would resolve a festering private dispute and thus may exercise power under Section 482 CrPC for quashing the proceedings or the complaint or the FIR as the case may be.

15. Bearing in mind the above principles which have been laid down, we are of the view that offences for which the appellants have been

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[6] ***(****2014) 6 SCC 466*

charged are infact offences against society and not private in nature. Such offences have serious impact upon society and continuance of trial of such cases is founded on the overridding effect of public interests in punishing persons for such serious offences. It is neither an offence arising out of commercial, financial, mercantile, partnership or such similar transactions or has any element of civil dispute thus it stands on a distinct footing. In such cases, settlement even if arrived at between the complainant and the accused, the same cannot constitute a valid ground to quash the F.I.R. or the charge sheet.

16. Thus the High Court cannot be said to be unjustified in refusing to quash the charge sheet on the ground of compromise between the parties.

17. The next issue which arises for consideration is whether the allegations made in the F.I.R constitute commission of an offence. As already stated hereinabove, the appellants have been charged with Section 493 of the Indian Penal Code and Section 3 read with Section 4 of the Dowry Prohibition Act.

Section 493 reads as under:-

> *"**Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.** - Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."*

18. A plain reading of the Section goes to show that in order to constitute an offence under this Section, it has to be demonstrated that a man has deceitfully caused any woman, who is not lawfully married to him, to believe

that she is lawfully married wife and thereby co-habit with him. In other words, the accused must induce a woman, not lawfully married to him, to believe that she is married to him and as a result of such mis-representation, woman should believe that she was lawfully married to the man and thus there should be co-habitation or sexual intercourse.

19. A three-Judge Bench of this Court in the case of ***Ram Chandra Bhagat Vs. State of Jharkhand***[7] after analysing the provisions of Section 493 of I.P.C, has observed as under:-

> *"Upon perusal of Section 493 IPC, to establish that a person has committed an offence under the said section, it must be established that a person had deceitfully induced a belief to a woman, who is not lawfully married to him, that she is a lawfully married wife of that person and thereupon she should cohabit or should have had sexual intercourse with that person. Looking at the aforestated section, it is clear that the accused must induce a woman, who is not lawfully married to him, to believe that he is married to her and as a result of the aforestated representation, the woman should believe that she was lawfully married to him and there should be cohabitation or sexual intercourse as a result of the deception."*
>
> *"If a woman is induced to change her status from that of an unmarried to that of a married woman with all the duties and obligations pertaining to the changed relationship and that result is accomplished by deceit, such woman within the law can be said to have been deceived and the offence under Section 493 IPC is brought home. Inducement by a person deceitfully to a woman to change her status from unmarried woman to a lawfully married woman and on that inducement making her cohabit with him in the belief that she is lawfully married to him is what constitutes an offence under Section 493. The victim woman has been induced to do that which, but for the false practice, she would not have done and has been led to change her social*

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[7] *(2013) 1 SCC 562*

> *and domestic status. The ingredients of Section 493 can be said to be fully satisfied when it is proved – (a) deceit causing a false belief of existence of a lawful marriage, and (b) cohabitation or sexual intercourse with the person causing such belief. It is not necessary to establish the factum of marriage according to personal law but the proof of inducement by a man deceitfully to a woman to change her status from that of an unmarried to that of a lawfully married woman and then make that woman cohabit with him establishes an offence under Section 493 IPC."*

20. The essence of an offence under Section 493 IPC is, therefore, practice of deception by a man on a woman as a consequence of which the woman is led to believe that she is lawfully married to him although she is not and then make her cohabit with him.

21. Deceit can be said to be a false statement of fact made by a person knowingly and recklessly with the intent that it shall be acted upon by another who on believing the same after having acted thereupon suffers an injury. It is an attempt to deceive and includes such declaration and statement that misleads others or causes him to believe which otherwise is false and incorrect.

22. In other words, to constitute an offence under Section 493 I.P.C., the allegations in the FIR must demonstrate that appellant had practiced deception on the daughter of the complainant causing a false belief of existence of lawful marriage and which led her to cohabit with him.

23. From a perusal of the F.I.R., we do not find that allegations made therein can be said to constitute any offence under Section 493 IPC. There are no allegation of any inducement or any deceit to make the victim believe that she was lawfully married to the appellant, which mislead her to have sexual intercourse with the accused appellant no.1. Only allegations in the First Information Report in this regard are that "after the marriage was settled, the appellant no.1 started visiting the house of the complainant frequently and would mislead and instigate his daughter that relation is final and only 'Feras' remains to be performed. On the fateful day, i.e., 16.08.2013, the appellant no.1 took leave and enticed and instigated his daughter took her to his room and promising that she is being his wife established physical relations."

24. A perusal of the averments would go to show that ingredients to constitute an offence under Section 493 I.P.C. are missing from the averments. The allegations do not even prima-facie, cull out any inducement of belief in the victim that she is lawfully married to the appellant no.1 and on account of this deceitful misstatement, the victim co-habited with the accused. Since the essential ingredients to constitute an offence under Section 493 I.P.C. are missing from the allegations made in the F.I.R., offence under the said Section can not be said to be made out against the appellants.

25. It is also to be taken note that whatever the allegations, in this regard, have been made only against the accused-appellant no. 1 which also do not

constitute an offence and there are no allegations in this regard in respect of other five accused-appellants.

26. The High Court having failed to advert itself to the aforesaid aspects discussed hereinabove and to that extent, the judgment is not liable to be sustained.

27. The other charge against the appellants are under Section 3/4 of the Dowry Prohibition Act. The said sections read as under:-

> *"Section 3 -Penalty for giving or taking dowry.— [1] If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable [with imprisonment for a term which shall not be less than [five years], and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more:*
>
> *Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than [five years].*
> *[(2) Nothing in sub-section (1) shall apply to, or in relation to,—*
> *(a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf): Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;*
> *(b) presents which are given at the time of marriage to the bridegroom (without any demand having been made in that behalf):*
>
> *Provided that such presents are entered in a list maintained in accordance with the rules made under this Act:*
> *Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial*

status of the person by whom, or on whose behalf, such presents are given.]

Section 4- Penalty for demanding dowry—If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months."

28. The allegations in the First Information Report in respect of Section 3/4 of the Dowry Prohibition Act are very specific. The relevant allegations are being reproduced hereunder :-

"Not only this applicant also finalised Barat Ghar OM Lawn for marriage party and made advance payment of Rs.20,000/- but Arun along with his parents and all the opposite parties stick to their demand of Rs. 5 Lakhs cash. Applicant is a poor employee. He showed his inability to pay such a huge amount. But despite a very humble request and praying opposite parties could not be persuaded and they made demand for Rs.5 Lakh in full Panchayat...."

29. A reading of the above provisions shows that essential ingredients of the offence under Section 3/4 of the Dowry Prohibition Act are that the persons accused should have made demand directly or indirectly from the parents or other relatives or guardians of a bride or a bridegroom as the case may be any dowry and/or abets the giving and taking of dowry. The allegations of the F.I.R. quoted hereinabove clearly go to show that a demand of dowry of Rs.5 Lakhs was made by the appellants from the complainants and thus it can not be said that no offence under the Dowry Prohibition Act are made out against the appellants. There being direct allegations of demand of Dowry in the First Information Report, the allegations prima-facie constitute a commission of an offence under the Dowry Prohibition Act and thus the charges leveled against the appellants under Section 3/4 of the said Act, are not liable to be quashed.

30. In view of the above facts and discussions, we are of the considered view that insofar as offence under Section 493 I.P.C. is concerned, since F.I.R. does not disclose the commission of any offence under the said Section and thus continuance of the criminal prosecution under said section would amount to abuse of process of the Court and the order of the High Court to that extent is liable to be set aside. However, insofar as offence against the appellants under Section 3/4 of the Dowry Prohibition Act is concerned, since the allegations disclose the commission of cognizable offence in the F.I.R., it is not a fit case to exercise power under Section 482 Cr.PC and to quash criminal proceedings against the appellants for the said offence.

31. As a result of our aforesaid discussion, the charge sheet insofar as Section 493 I.P.C is concerned stands quashed. However, in respect of charge sheet under Section 3 read with Section 4 of Dowry Prohibition Act, the Appeal stands dismissed.

.....J.
(NAVIN SINHA)

.....J.
(KRISHNA MURARI)

NEW DELHI;
10th FEBRUARY, 2020.